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REMARKS

Claims 1-41 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

Applicant notes that not all of the references cited on Applicant's Information Disclosure Statement have been initialed as being considered by the Examiner. While Applicant assumes and believes that the Examiner has reviewed the references cited under "Other Documents" of Applicant's Information Disclosure Statement as the bottom of each page was signed by the Examiner and that not initialing these references was an oversight by the Examiner, Applicant respectfully requests the Examiner to initial every reference cited on the Information Disclosure Statement and to send the same with the next Office Action or Notice of Allowance.

Claim 23 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. According to the Office Action, claim 23 is improper as the step of claim 23 cannot be performed after all of the steps of claim 22 have been performed. However, the steps of a claim can be performed in any order unless expressly recited otherwise. See MPEP §2111.01(II). Accordingly, claim 23 is a further step to the method of claim 22 and the method of claim 23 as written can be performed in any order as dictated by logic and grammar. Accordingly, claim 23 is proper as written.

Claims 1-3, 5, 10-14, 19, 20, 22, 23, 25, 30-34, 39 and 40 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,957,385 to Getz et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of anticipation with respect to the rejected claims.

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Applicant notes that claims 1 and 22 have been amended. Amended claim 1 defines a battery package comprising at least two separate modules, each module including a base having a first face and a second face, each module further including at least one pocket extending outwardly from the first face, at least one battery placed into each pocket and a cover placed over the at least two separate modules. Two of the at least two separate modules have the first faces thereof facing each other, with at least one pocket of a first one of the two of the at least two separate modules being located between a pair of pockets of a second one of the two of the at least two separate modules. The at least two separate modules will easily separate upon removal of the cover from over the at least two separate modules and none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules.

The prior art of record does not disclose or suggest the above noted features of claim 1. As an initial matter, Applicant notes that the rejection of the claims as being anticipated by the Getz et al. '358 patent does not include a discussion of any of the reference numbers of the Getz et al. '358 patent, such that it is extremely difficult for Applicant to determine the rejection of the claims. Accordingly, Applicant respectfully requests that any future Office Action designate a particular part relied on to reject the claims and the pertinence of each reference clearly explained, as required by 37 C.F.R. §1.104 and MPEP §706.

Nevertheless, in regard to claim 1, the Getz et al. '358 patent does not disclose or suggest that none of the modules are able to be removed from within a cover while the cover is over all of the at least two separate modules. Notably, the dispenser of the Getz et al. '358 patent is specifically made for allowing the batteries to be removed from the battery dispensing units of the Getz et al. '358 patent. Accordingly, claim 1 is in condition for allowance over the Getz et al. '358 patent.

Claims 2-20 depend from claim 1, and since claim 1 is patentable over the Getz et al. '358 patent as discussed above, claims 2-20 are patentable over the Getz et al. '358 patent. Furthermore, in regard to claim 2, the Getz et al. '358 patent does not disclose or suggest that the at least two separate modules comprise three separate modules. In the rejection of claim 2, the Examiner has identified FIG. 6 of the Getz et al. '358 patent. However, in the description

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of FIG. 6, at least three separate modules are not disclosed or suggested. Furthermore, in regard to claims 3-6, the Getz et al. '358 patent does not disclose or suggest that each module includes a lid over a second face of the base. Notably, the Office Action has not identified any lid in the Getz et al. '358 patent. Moreover, the rejection of claim 3 has not even addressed the fact that claim 3 claims a lid. Furthermore, in regard to claim 5, the prior art of record does not disclose or suggest a base and a lid that each include perforations between each of the pockets. Notably, the Getz et al. '358 patent does not disclose or suggest any perforations in the discussion of FIG. 6. Moreover, the Getz et al. '358 patent does not disclose any lid or perforations in a lid. Notably, no perforations are disclosed in association with FIG. 6 in the Getz et al. '358 patent. Furthermore, in regard to claims 11 and 12, the Getz et al. '358 patent does not disclose that each module includes only four pockets or only five pockets. Moreover, in regard to claim 19, the Getz et al. '358 patent does not expressly disclose perforations between each pocket as discussed above in regard to claim 5. Accordingly, claims 2-20 are in condition for allowance.

Claim 22 defines a method of packaging batteries comprising providing at least two separate modules, each module including a base having a first face and a second face, each module further including at least one pocket extending outwardly from the first face, placing at least one battery in each pocket, positioning the first face of at least two of the plurality of separate modules facing each other, with at least one pocket of a first one of the at least two of the at least two separate modules being located between a pair of pockets of a second one of the at least two of the at least two separate modules and placing a cover over the at least two separate modules. None of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules.

The prior art of record does not disclose or suggest the above noted features of claim 22. First, once again, Applicant requests that the next Office Action specifically define the features of the references used to reject the claims. Second, the Getz et al. '358 patent does not disclose or suggest that none of the modules are able to be removed from within a cover while the cover is over all of the at least two separate modules. Accordingly, claim 22 is in condition for allowance.

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Claims 23-40 depend from claim 22, and since claim 22 is patentable over the Getz et al. '358 patent as discussed above, claims 23-40 are patentable over the Getz et al. '358 patent. Moreover, in regard to claims 23-26, the Getz et al. '358 patent does not disclose or suggest placing a lid over a second face of each module. Notably, the Office Action has not identified any lid in the Getz et al. '358 patent. Moreover, the rejection of claim 23 has not even addressed the fact that claim 23 claims a lid. Moreover, in regard to claim 25, the prior art of record does not disclose or suggest making perforations in a base and a lid between each of the pockets. Notably, the Getz et al. '358 patent does not disclose or suggest any perforations in the discussion of FIG. 6. Moreover, the Getz et al. '358 patent does not disclose any lid or perforations in a lid. Notably, no perforations are disclosed in association with FIG. 6 in the Getz et al. '358 patent. Furthermore, in regard to claims 31 and 32, the Getz et al. '358 patent does not disclose that each module includes only four pockets or only five pockets. Moreover, in regard to claim 34, the Getz et al. '358 patent does not expressly disclose perforating each module between each pocket. Accordingly, claims 23-40 are in condition for allowance.

Claims 4 and 24 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Getz et al. '358 patent. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

In order to establish a *prima facie* case of obviousness, three criteria must be met. M.P.E.P. § 706.02(j). Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Secondly, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability

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of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992); MPEP §2142. Applicants respectfully assert that the Examiner has not yet met the Examiner's burden of establishing a *prima facie* case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 4 depends from claims 3 and 1 and further defines the lid as being transparent. First, claim 4 depends from claims 3 and 1, and since claims 3 and 1 define unobvious patentable subject matter as discussed above, claim 4 defines patentable subject matter. Second, as discussed above, the Getz et al. '385 patent does not disclose or suggest any lid, such that there is no suggestion or motivation for making a lid transparent.

Third, the Examiner has not compared the facts in *In re Leshin* and explain why, based upon this comparison, the legal conclusion in the present case should be the same as that in *In re Leshin* as required by MPEP §2144. Instead, the Examiner has relied on a *per se* rule that selecting a known material on the basis of its suitability for the intended use is a matter of obvious design choice. However, it is clear that "reliance on *per se* rules of obviousness is legally incorrect and must cease." *In re Ochiai*, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995).

Claims 6-9 and 26-29 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Getz et al. '358 patent in view of PCT Publication WO 01/98171 to Miller et al. The standard for rejecting a claim as being obvious is outlined above.

Claim 6 depends from claims 3 and 1 and further defines the battery package as including a card positioned over a lid and a second face of each module. First, claim 6 depends from claims 3 and 1, and since claims 3 and 1 define patentable subject matter as discussed above, claim 6 defines patentable subject matter. Second, as discussed above in regard to claim 3, the prior art of record does not disclose or suggest any lid, such that any combination of the references would not include a card positioned over a lid. Third, there is no suggestion or motivation for adding the layer of cardboard as disclosed in the Miller et al.

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‘171 publication to the battery strip dispenser of the Getz et al. ‘358 patent. Initially, since the Office Action has not specifically identified a lid by number in either of the patents, it is very difficult, if not impossible, for Applicant to determine what the Office Action means in its reference to a lid. Moreover, Applicant is unsure why a card over a lid would strengthen a compartment, much less what element is being referred to by use of the term “compartment” in the Office Action. Finally, Applicant submits that the Office Action has not even set forth the bare requirements for a *prima facie* case of obviousness as set forth in MPEP §2141 and the legal cases cited therein. Notably, the Office Action has not set out that it would have been obvious to one of ordinary skill at the time the invention was made, or any statement regarding a person of ordinary skill in the art. Applicant submits that the absence of these requirements for making a rejection of obviousness negates any contention of unpatentability as set forth in the Office Action. Accordingly, claim 6 is in condition for allowance.

Claim 7 depends from claim 1 and further defines a battery package as including a card positioned over a second face of each module. The prior art of record does not disclose or suggest the above noted features of claim 7. As an initial matter, since a second face of a module has not been identified in the Office Action, it is impossible for Applicant to determine what modification is made to the base Getz et al. reference. Nevertheless, claim 7 depends from claim 1, and since claim 1 defines patentable subject matter as discussed above, claim 7 defines patentable subject matter. Moreover, as discussed above in regard to claim 6, Applicant submits that the Office Action has not set forth the base requirements for a *prima facie* rejection as a claim being obvious over the prior art. Accordingly, claim 7 is in condition for allowance.

Claim 8 depends from claim 1 and further defines each pocket as including a non-rotation feature for maintaining batteries in place therein in a selected rotated position. First, claim 8 depends from claim 1, and since claim 1 defines patentable subject matter as discussed above, claim 8 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. ‘171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. ‘171

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publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 8 is in condition for allowance.

Claim 9 depends from claim 8, and further defines the non-rotation feature as comprising at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. First, claim 9 depends from claims 8 and 1, and since claims 8 and 1 define patentable subject matter as discussed above, claim 9 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 9 is in condition for allowance.

Claim 26 depends from claims 23 and 22 and further defines the method as including positioning a card over a lid and a second face of each module. First, claim 26 depends from claims 23 and 22, and since claims 23 and 22 define patentable subject matter as discussed above, claim 26 defines patentable subject matter. Second, as discussed above in regard to claim 23, the prior art of record does not disclose or suggest any lid, such that any combination of the references would not include a card positioned over a lid. Third, there is no suggestion or motivation for adding the layer of cardboard as disclosed in the Miller et al. '171 publication to the battery strip dispenser of the Getz et al. '358 patent. First of all, since the Office Action has not specifically identified a lid by number in either of the patents, it is very difficult, if not impossible, for Applicant to determine what the Office Action means in its reference to a lid. Moreover, Applicant is unsure why a card over a lid would strengthen a compartment, much less what element in the references is being referred to by use of the term "compartment" in the references cited in the Office Action. Finally, Applicant submits that the Office Action has not even set forth the bare requirements for a *prima facie* case of obviousness as set forth in MPEP §2141 and the legal cases cited therein. Notably, the Office Action has not set out that it would have been obvious to one of ordinary skill at the time the

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invention was made, or any statement regarding a person of ordinary skill in the art. Applicant submits that the absence of these requirements for making a rejection of obviousness negates any contention of unpatentability as set forth in the Office Action. Accordingly, claim 26 is in condition for allowance.

Claim 27 depends from claim 22 and further defines a method as including a card positioned over a second face of each module. The prior art of record does not disclose or suggest the above noted features of claim 27. As an initial matter, since a second face of a module has not been identified in the Office Action, it is impossible for Applicant to determine what modification is made to the base Getz et al. reference. Nevertheless, claim 27 depends from claim 22, and since claim 22 defines patentable subject matter as discussed above, claim 27 defines patentable subject matter. Moreover, as discussed above in regard to claim 26, Applicant submits that the Office Action has not set forth the base requirements for a *prima facie* rejection as a claim being obvious over the prior art. Accordingly, claim 27 is in condition for allowance.

Claim 28 depends from claim 22, and further defines the method as including providing each pocket with a non-rotation feature and maintaining batteries in place in the pockets in a selected rotated position. First, claim 28 depends from claim 22, and since claim 22 defines patentable subject matter as discussed above, claim 28 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 28 is in condition for allowance.

Claim 29 depends from claim 28, and further defines the non-rotation feature as comprising at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. Claim 29 depends from claims 28 and 22, and since claims 28 and 22 define patentable subject matter as discussed above, claim 29 defines patentable subject matter. Second, Applicant submits that the Office Action has not set

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forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 29 is in condition for allowance.

Claim 21 has been rewritten into independent form and is therefore identical to claim 21 as previously pending. Claim 21 defines a battery package comprising at least two separate modules, each module including a base having a first face and a second face, each module further including at least one pocket extending outwardly from the first face, at least one battery placed into each pocket and a cover placed over the at least two separate modules. Two of the at least two separate modules have the first faces thereof facing each other, with at least one pocket of a first one of the two of the at least two separate modules being located between a pair of pockets of a second one of the two of the at least two separate module. The at least two separate modules will easily separate upon removal of the cover from over the at least two separate modules. The cover comprises shrink wrap plastic.

The prior art of record does not disclose or suggest the above noted features of claim 21. According to the Office Action "it is notoriously well known in the art to provide shrink wrap to cover the packages into one unit." Furthermore, according to the Office Action, "i[t] would have been obvious in view of official notice to provide shrink wrap material as a cover to surround the packages." First, Applicant submits that the Office Action has not made a *prima facie* case of obviousness to reject claim 21 as the Office Action has not set forth the level of ordinary skill in the art nor has the Office Action stated that it would have been obvious at the time the invention was made. Second, as the Office Action is very vague, Applicant is unsure as to what modification is being made to the Getz et al. '358 patent in the rejection of claim 21. Is the Office Action proposing that the dispenser is made into shrink wrap material? If so, there is no suggestion or motivation for making such a change, as the dispenser at that point would no longer be a dispenser. Alternatively, is the Office Action trying to state that it would have been obvious to provide shrink wrap over a plurality of batteries that are designed to be sold separately such that the batteries would not be able to be

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sold separately? It is also not obvious to make such a change. Finally, Applicant submits that shrink wrap and use thereof is not well known as set forth in the Office Action and respectfully requests the Examiner to provide the documentary evidence of such. Accordingly, claim 21 is in condition for allowance.

Claim 41 defines a method of packaging batteries comprising providing at least two separate modules, each module including a base having a first face and a second face, each module further including at least one pocket extending outwardly from the first face, placing at least one battery in each pocket, positioning the first face of at least two of the plurality of separate modules facing each other, with at least one pocket of a first one of the at least two of the at least two separate modules being located between a pair of pockets of a second one of the at least two of the at least two separate modules and placing a cover over the at least two separate modules. Placing the cover comprises shrink wrapping plastic one of the at least two separate modules.

The prior art of record does not disclose or suggest the above noted features of claim 41. Specifically, as discussed above in regard to claim 21, the Office Action has not set forth the bare minimum for a *prima facie* case of obviousness, nor is there any motivation for providing a shrink wrap material as a cover to surround the packages as set forth in the Office Action. Accordingly, claim 41 is in condition for allowance.

Claims 1, 3, 4, 6-14, 20, 22-24, 26-34 and 40 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Miller et al. '171 publication in view of U.S. Patent No. 6,253,920 to Kallgren and the Getz et al. '358 patent. The standard for rejecting a claim as being obvious is discussed above.

The prior art of record does not disclose or suggest the above noted features of claims 1 or 22. Specifically, there is no suggestion or motivation for combining the Miller et al. '171 publication, the Kallgren '920 patent and the Getz et al. '328 patent. First, Applicant once again submits that the Office Action does not set forth a *prima facie* case of obviousness. The Office Action has neither included any discussion of the level of ordinary skill in the art nor has the Office Action stated that it would have been obvious at the time of the invention to modify the references. Accordingly, the Office Action has not set forth the base requirements

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for a *prima facie* case of obviousness. Second, Applicant is unsure how the three references are combined or modified. In the discussion of the modification or combination of the references, only the Kallgren '920 patent and the Getz et al. '358 patent are discussed such that the Office Action is very unclear. Finally, as the Office Action has not set forth a clear combination of the references, it is impossible for the Applicant to determine whether any combination is proper and whether any combination includes all of the features of the claims. Nevertheless, Applicant believes that any combination of the references would not include a battery package wherein none of the modules are able to be removed from within a cover while the cover is over all of the at least two separate modules as claimed in claim 1 or claim 22. Accordingly, claims 1 and 22 are in condition for allowance.

Claims 3, 4, 6-14 and 20 depend from claim 1, and since claim 1 defines unobvious patentable subject matter as discussed above, claims 3, 4, 6-14 and 20 define patentable subject matter. Furthermore, in regard to claims 3, 4 and 6, the prior art of record does not disclose or suggest that each module includes a lid over a second face of the base. Notably, the Office Action has not identified any lid in any of the references. Furthermore, in regard to claim 7, the prior art of record does not disclose a card. Notably, the Office Action has not specifically identified any card in the prior art by reference number. Moreover, in regard to claims 8 and 9, the prior art of record does not disclose or suggest any non-rotation feature. While the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Furthermore, in regard to claims 11 and 12, the prior art of record does not disclose or suggest that each module includes only four pockets or only five pockets. Accordingly, claims 3, 4, 6-14 and 20 are in condition for allowance.

Claims 23, 24, 26-34 and 40 depend from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claims 23, 24, 26-34 and 40 define patentable subject matter. Furthermore, in regard to claims 23, 24 and 26, the prior art of record does not disclose or suggest that a method includes placing a lid over a second face of the base. Notably, the Office Action has not identified any lid in any of the references. Furthermore, in regard to claim 25, the prior art of record does not disclose a card. Notably,

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the Office Action has not specifically identified any card in the prior art by reference number. Moreover, in regard to claims 28 and 29, the prior art of record does not disclose or suggest any non-rotation feature. While the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Furthermore, in regard to claims 31 and 32, the prior art of record does not disclose or suggest that each module includes only four pockets or five pockets. Accordingly, claims 23, 24, 26-34 and 40 are in condition for allowance.

Claim 2 has been rejected under 35 U.S.C. §103(a) as being unpatentable over “the references applied above with respect to claim 1, further in view of official notice.” As an initial matter, Applicant is unable to determine what combination is being made here since claim 1 has been rejected in the Office Action as being anticipated by the Getz et al. '358 patent and over a combination of the Miller et al. '171 publication, the Kallgren '920 patent and the Getz et al. '358 patent. Applicant is unsure as to what further modification is made in the rejection of claim 2. Nevertheless, in the rejection of claim 2 in the Office Action, the Office Action has only taken official notice that more than two modules are conventionally stored within a container or cover for shipment purposes. First, Applicant traverses such an official notice as Applicant disputes that it is notoriously well known to place more than two modules in the battery strip dispenser of the Getz et al. '358 patent (as this is apparently the container or cover identified in the Office Action). Second, even if the official notice to reject claim 2 was proper, the rejection of claim 2 has not set forth any modification or combination of the prior art references such that the rejection of claim 2 is improper. Accordingly, claim 2 is in condition for allowance.

In paragraph 11 of the Office Action, claims 21 and 41 have been rejected under 35 U.S.C. §103(a) “as being unpatentable over the references applied above with respect to claims 1 and 22, further in view of official notice.” First, Applicant is unsure what the “references applied above” refer to such that paragraph 11 is vague and Applicant is unsure what the Office Action is referring to in this paragraph. Second, Applicant submits that it is not notoriously well known to add shrink wrap material to any of the cited references. Third, the Office Action has not set forth a proper rejection as the level of ordinary skill in the art has not

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been set forth and the Office Action has not stated when it would have been obvious to make any modification. Finally, Applicant submits that shrink wrap and use thereof is not well known as set forth in the Office Action and respectfully requests the Examiner to provide the documentary evidence of such. Accordingly, claims 21 and 41 are in condition for allowance.

Claims 1, 3-5, 10, 11, 13, 14, 19, 20, 22-25, 30, 31, 33, 34, 39 and 40 have been rejected under 35 U.S.C. §103(a) as being unpatentable over design patent D479,126 to Kumakura et al. in view of the Kallgren '920 patent and the Getz et al. '358 patent. The standard for rejecting a claim as being obvious is discussed above.

The prior art of record does not disclose or suggest the above noted features of claims 1 or 22. Specifically, there is no suggestion or motivation for combining the Kumakura et al. '126 publication, the Kallgren '920 patent and the Getz et al. '328 patent. As an initial matter, Applicant once again submits that the Office Action has not set forth a *prima facie* case of obviousness. The Office Action has neither included any discussion of the level of ordinary skill in the art nor has the Office Action stated that it would have been obvious at the time of the invention to modify the references. Accordingly, the Office Action has not set forth the base requirements for a *prima facie* case of obviousness. Second, Applicant is unsure how the three references are combined or modified. In the discussion of the modification or combination of the references, only the Kallgren '920 patent and the Getz et al. '358 patent are discussed such that the Office Action is very unclear. Finally, as the Office Action has not set forth a clear combination of the references, it is impossible for the Applicant to determine whether any combination is proper and whether any combination includes all of the features of the claims. Nevertheless, Applicant believes that any combination of the references would not include a battery package wherein none of the modules are able to be removed from within a cover while the cover is over all of the at least two separate modules as claimed in claim 1 or claim 22. Accordingly, claims 1 and 22 are in condition for allowance.

Claims 3-5, 10, 11, 13, 14, 19 and 20 depend from claim 1, and since claim 1 defines unobvious patentable subject matter as discussed above, claims 3-5, 10, 11, 13, 14, 19 and 20 define patentable subject matter. Furthermore, in regard to claims 3-5, the prior art of record does not disclose or suggest that each module includes a lid over a second face of the base.

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Notably, the Office Action has not identified any lid in any of the references. Furthermore, in regard to claim 5, the prior art of record does not disclose a base and a lid that each includes perforations between each of the pockets of a module. Notably, the Kumakura et al. '126 patent does not disclose or suggest any perforations and the Office Action has not identified any perforations in any of the references that would be added to the Kumakura et al. '126 patent. Furthermore, in regard to claim 11, the prior art of record does not disclose or suggest that each module includes only four pockets. Finally, in regard to claim 19, the prior art of record does not disclose or suggest that each module includes perforations between each pocket. Notably, the Kumakura et al. '126 patent does not disclose or suggest any perforations and the Office Action has not identified any perforations in any of the references that would be added to the Kumakura et al. '126 patent. Accordingly, claims 3-5, 10, 11, 13, 14, 19 and 20 are in condition for allowance.

Claims 23-25, 30, 31, 33, 34, 39 and 40 depend from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claims 23-25, 30, 31, 33, 34, 39 and 40 define patentable subject matter. Furthermore, in regard to claims 23-25, the prior art of record does not disclose or suggest that each module includes a lid over a second face of the base. Notably, the Office Action has not identified any lid in any of the references. Furthermore, in regard to claim 25, the prior art of record does not disclose a base and a lid that each includes perforations between each of the pockets of a module. Notably, the Kumakura et al. '126 patent does not disclose or suggest any perforations and the Office Action has not identified any perforations in any of the references that would be added to the Kumakura et al. '126 patent. Furthermore, in regard to claim 31, the prior art of record does not disclose or suggest that each module includes only four pockets. Finally, in regard to claim 39, the prior art of record does not disclose or suggest that each module includes perforations between each pocket. Notably, the Kumakura et al. '126 patent does not disclose or suggest any perforations and the Office Action has not identified any perforations in any of the references that would be added to the Kumakura et al. '126 patent. Accordingly, claims 23-25, 30, 31, 33, 34, 39 and 40 are in condition for allowance.

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Claims 2, 12 and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over “the references applied above with respect to claims 1 and 22, respectively, further in view of official notice.” As an initial matter, Applicant is unable to determine what combination is being made here since claims 1 and 22 have been rejected in the Office Action as being anticipated by the Getz et al. ‘358 patent, over a combination of the Miller et al. ‘171 publication, the Kallgren ‘920 patent and the Getz et al. ‘358 patent and over a combination of the Kumakura et al. ‘126 patent, the Kallgren ‘920 patent and the Getz et al. ‘358 patent. Applicant is unsure as to what further modification is made in the rejection of claims 2, 12 and 32. Nevertheless, in the rejection of claim 2 in the Office Action, the Office Action has only taken official notice that more than two modules are conventionally stored within a container or cover for shipment purposes. First, Applicant traverses such an official notice as Applicant disputes that it is notoriously well known to place more than two modules in the battery strip dispenser of the Getz et al. ‘358 patent (as this is apparently the container or cover identified in the Office Action). Second, even if the official notice to reject claim 2 was proper, the rejection of claim 2 has not set forth any modification or combination of the prior art references such that the rejection of claim 2 is improper. Furthermore, in the rejection of claims 12 and 32 in the Office Action, the Office Action has only taken official notice that it would have been obvious to provide more compartments to store more batteries. Applicant traverses such an official notice as the Office Action has not set out what element for which Office Notice is being taken. Second, even if the official notice to reject claims 12 and 32 was proper, the rejection of claims 12 and 32 has not set forth any modification or combination of the prior art references such that the rejection of claims 12 and 32 is improper. Accordingly, claims 2, 12 and 32 are in condition for allowance.

Claims 6-9 and 26-29 have been rejected under 35 U.S.C. §103(a) as being unpatentable over “the references applied above with respect to claims 1 and 22, respectively, further in view of Miller.” The standard for rejecting a claim as being obvious is outlined above. As an initial matter, Applicant is unable to determine what combination is being made here since claims 1 and 22 have been rejected in the Office Action as being anticipated by the Getz et al. ‘358 patent, over a combination of the Miller et al. ‘171 publication, the Kallgren

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‘920 patent and the Getz et al. ‘358 patent and over a combination of the Kumakura et al. ‘126 patent, the Kallgren ‘920 patent and the Getz et al. ‘358 patent. Applicant is unsure as to what further modification is made in the rejection of claims 6-9 and 26-29.

Claim 6 depends from claims 3 and 1 and further defines the battery package as including a card positioned over a lid and a second face of each module. First, claim 6 depends from claims 3 and 1, and since claims 3 and 1 define patentable subject matter as discussed above, claim 6 defines patentable subject matter. Second, as discussed above in regard to claim 3, the prior art of record does not disclose or suggest any lid, such that any combination of the references would not include a card positioned over a lid. Third, there is no suggestion or motivation for adding the layer of cardboard as disclosed in the Miller et al. ‘171 publication to the battery strip dispenser of any of the references cited in the Office Action. Initially, since the Office Action has not specifically identified a lid by number in any of the references, it is very difficult, if not impossible, for Applicant to determine what the Office Action means in its reference to a lid. Moreover, Applicant is unsure why a card over a lid would strengthen a compartment, much less what element is being referred to by use of the term “compartment” in the Office Action. Finally, Applicant submits that the Office Action has not even set forth the bare requirements for a *prima facie* case of obviousness as set forth in MPEP §2141 and the legal cases cited therein. Notably, the Office Action has not set out that it would have been obvious to one of ordinary skill at the time the invention was made, or any statement regarding a person of ordinary skill in the art. Applicant submits that the absence of these requirements for making a rejection of obviousness negates any contention of unpatentability as set forth in the Office Action. Accordingly, claim 6 is in condition for allowance.

Claim 7 depends from claim 1 and further defines a battery package as including a card positioned over a second face of each module. The prior art of record does not disclose or suggest the above noted features of claim 7. As an initial matter, since a second face of a module has not been identified in the Office Action, it is impossible for Applicant to determine what modification is made to the base references. Nevertheless, claim 7 depends from claim 1, and since claim 1 defines patentable subject matter as discussed above, claim 7 defines

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patentable subject matter. Moreover, as discussed above in regard to claim 6, Applicant submits that the Office Action has not set forth the base requirements for a *prima facie* rejection as a claim being obvious over the prior art. Accordingly, claim 7 is in condition for allowance.

Claim 8 depends from claim 1 and further defines each pocket as including a non-rotation feature for maintaining batteries in place therein in a selected rotated position. First, claim 8 depends from claim 1, and since claim 1 defines patentable subject matter as discussed above, claim 8 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 8 is in condition for allowance.

Claim 9 depends from claim 8, and further defines the non-rotation feature as comprising at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. First, claim 9 depends from claims 8 and 1, and since claims 8 and 1 define patentable subject matter as discussed above, claim 9 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 9 is in condition for allowance.

Claim 26 depends from claims 23 and 22 and further defines the method as including positioning a card over a lid and a second face of each module. First, claim 26 depends from claims 23 and 22, and since claims 23 and 22 define patentable subject matter as discussed above, claim 26 defines patentable subject matter. Second, as discussed above in regard to claim 23, the prior art of record does not disclose or suggest any lid, such that any

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combination of the references would not include a card positioned over a lid. Third, there is no suggestion or motivation for adding the layer of cardboard as disclosed in the Miller et al. '171 publication to the battery strip dispenser of any of the cited references. First of all, since the Office Action has not specifically identified a lid by number in either of the patents, it is very difficult, if not impossible, for Applicant to determine what the Office Action means in its reference to a lid. Moreover, Applicant is unsure why a card over a lid would strengthen a compartment, much less what element in the references is being referred to by use of the term "compartment" in the references cited in the Office Action. Finally, Applicant submits that the Office Action has not even set forth the bare requirements for a *prima facie* case of obviousness as set forth in MPEP §2141 and the legal cases cited therein. Notably, the Office Action has not set out that it would have been obvious to one of ordinary skill at the time the invention was made, or any statement regarding a person of ordinary skill in the art. Applicant submits that the absence of these requirements for making a rejection of obviousness negates any contention of unpatentability as set forth in the Office Action. Accordingly, claim 26 is in condition for allowance.

Claim 27 depends from claim 22 and further defines a method as including a card positioned over a second face of each module. The prior art of record does not disclose or suggest the above noted features of claim 27. As an initial matter, since a second face of a module has not been identified in the Office Action, it is impossible for Applicant to determine what modification is made to the base references. Nevertheless, claim 27 depends from claim 22, and since claim 22 defines patentable subject matter as discussed above, claim 27 defines patentable subject matter. Moreover, as discussed above in regard to claim 26, Applicant submits that the Office Action has not set forth the base requirements for a *prima facie* rejection as a claim being obvious over the prior art. Accordingly, claim 27 is in condition for allowance.

Claim 28 depends from claim 22, and further defines the method as including providing each pocket with a non-rotation feature and maintaining batteries in place in the pockets in a selected rotated position. First, claim 28 depends from claim 22, and since claim 22 defines patentable subject matter as discussed above, claim 28 defines patentable subject matter.

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Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 28 is in condition for allowance.

Claim 29 depends from claim 28, and further defines the non-rotation feature as comprising at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. Claim 29 depends from claims 28 and 22, and since claims 28 and 22 define patentable subject matter as discussed above, claim 29 defines patentable subject matter. Second, Applicant submits that the Office Action has not set forth the requirements for a *prima facie* case of obviousness as discussed above. Finally, the Office Action states that the Miller et al. '171 publication includes a non-rotation feature 76, 78 to prevent rotation of the batteries. However, the Miller et al. '171 publication does not include any reference numbers 76 and 78. Therefore, it is impossible for Applicant to address this rejection at this time. Accordingly, claim 29 is in condition for allowance.

In paragraph 15 of the Office Action, claims 21 and 41 have been rejected under 35 U.S.C. §103(a) "as being unpatentable over the references applied above with respect to claims 1 and 22, further in view of official notice." First, Applicant is unsure what the "references applied above" refer to such that paragraph 15 is vague and Applicant is unsure what the Office Action is referring to in this paragraph. Second, Applicant submits that it is not notoriously well known to add shrink wrap material to any of the cited references. Third, the Office Action has not set forth a proper rejection as the level of ordinary skill in the art has not been set forth and the Office Action has not stated when it would have been obvious to make any modification. Finally, Applicant submits that shrink wrap and use thereof is not well known as set forth in the Office Action and respectfully requests the Examiner to provide the documentary evidence of such. Accordingly, claims 21 and 41 are in condition for allowance.

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All pending claims 1-41 are believed to be in condition for allowance and a Notice of such is therefore earnestly solicited.

Respectfully submitted,

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Date

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